

the level of flood protection provided by a project to which subsection (a) of this section applies.

(3) Limitation on statutory construction

Nothing in this subsection shall be construed to confer any regulatory authority upon the Secretary or the Administrator of the Federal Emergency Management Agency.

(d) Technical support

The Secretary may provide technical support to a non-Federal interest for a project to which subsection (a) of this section applies for the development and implementation of plans prepared under subsection (b) of this section.

(Pub. L. 99-662, title IV, § 402, Nov. 17, 1986, 100 Stat. 4133; Pub. L. 100-676, § 14, Nov. 17, 1988, 102 Stat. 4026; Pub. L. 104-303, title II, § 202(c)(1), Oct. 12, 1996, 110 Stat. 3674; Pub. L. 106-541, title II, § 209(a), (c), Dec. 11, 2000, 114 Stat. 2591; Pub. L. 109-295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-541, § 209(c), substituted “Floodplain” for “Flood plain” in heading and “floodplain” for “flood plain” in first sentence.

Subsec. (c). Pub. L. 106-541, § 209(a), in first sentence substituted “The” for “Within 6 months after October 12, 1996, the”, designated second sentence as par. (2), inserted heading, substituted “The guidelines developed under paragraph (1) shall—” for “Such guidelines shall”, designated remainder of sentence as subpar. (A), inserted “to be undertaken by non-Federal interests to” after “policies”, added subpar. (B), and redesignated former par. (2) as (3).

1996—Pub. L. 104-303 substituted “Floodplain management requirements” for “Compliance with flood plain management and insurance programs” in section catchline and amended text generally. Prior to amendment, text read as follows: “Before construction of any project for local flood protection or any project for hurricane or storm damage reduction, the non-Federal interests shall agree to participate in and comply with applicable Federal flood plain management and flood insurance programs.”

1988—Pub. L. 100-676 inserted “or any project for hurricane or storm damage reduction” after “local flood protection”.

CHANGE OF NAME

“Administrator of the Federal Emergency Management Agency” substituted for “Director of the Federal Emergency Management Agency” in subsec. (c)(3) on authority of section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109-295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109-295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-541, title II, § 209(b), Dec. 11, 2000, 114 Stat. 2591, provided that: “The amendments made by subsection (a) [amending this section] shall apply to any project or separable element of a project with respect to which the Secretary [of the Army] and the non-Federal interest have not entered a project cooperation agreement on or before the date of enactment of this Act [Dec. 11, 2000].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-303, title II, § 202(c)(2), Oct. 12, 1996, 110 Stat. 3675, provided that: “The amendment made by

paragraph (1) [amending this section] shall apply to any project or separable element thereof with respect to which the Secretary and the non-Federal interest have not entered into a project cooperation agreement on or before the date of the enactment of this Act [Oct. 12, 1996].”

REFERENCE TO PROJECT COOPERATION AGREEMENT
DEEMED REFERENCE TO PROJECT PARTNERSHIP AGREEMENT

Reference to “project cooperation agreement” deemed to be reference to “project partnership agreement”, see section 2003(f)(2) of Pub. L. 110-114, set out as a note under section 1962d-5b of Title 42, The Public Health and Welfare.

§ 701b-13. Construction of flood control projects by non-Federal interests

(a) Authority

Non-Federal interests are authorized to undertake flood control projects in the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of actual construction.

(b) Studies and design activities

(1) By non-Federal interests

A non-Federal interest may prepare, for review and approval by the Secretary, the necessary studies and design documents for any construction to be undertaken pursuant to subsection (a) of this section.

(2) By Secretary

Upon request of an appropriate non-Federal interest, the Secretary may undertake all necessary studies and design activities for any construction to be undertaken pursuant to subsection (a) of this section and provide technical assistance in obtaining all necessary permits for such construction if the non-Federal interest contracts with the Secretary to provide to the United States funds for the studies and design activities during the period in which the studies and design activities will be conducted.

(c) Completion of studies and design activities

In the case of any study or design documents for a flood control project that were initiated before October 12, 1996, the Secretary may complete and transmit to the appropriate non-Federal interests the study or design documents or, upon the request of such non-Federal interests, terminate the study or design activities and transmit the partially completed study or design documents to such non-Federal interests for completion. Studies and design documents subject to this subsection shall be completed without regard to the requirements of subsection (b) of this section.

(d) Authority to carry out improvement

(1) In general

(A) Studies and design activities under subsection (b)

(i) In general

A non-Federal interest may carry out construction for which studies and design documents are prepared under subsection (b) of this section only if the Secretary approves the project for construction.

(ii) Criteria for approval

The Secretary shall approve a project for construction if the Secretary determines that the project is technically sound, economically justified, and environmentally acceptable and meets the requirements for obtaining the appropriate permits required under the authority of the Secretary.

(iii) No unreasonable withholding of approval

The Secretary shall not unreasonably withhold approval of a project for construction.

(iv) No effect on regulatory authority

Nothing in this subparagraph affects any regulatory authority of the Secretary.

(B) Studies and design activities under subsection (c)

Any non-Federal interest that has received from the Secretary under subsection (c) of this section a favorable recommendation to carry out a flood control project, or separable element of a flood control project, based on the results of completed studies and design documents for the project or element may carry out the project or element if a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been filed for the project or element.

(2) Permits

Any plan of improvement proposed to be implemented in accordance with this subsection (other than paragraph (1)(A)) shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority. Such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits if the Secretary determines that the applicable regulatory criteria and procedures have been satisfied.

(3) Monitoring

The Secretary shall monitor any project for which a permit is granted under this subsection in order to ensure that such project is constructed, operated, and maintained in accordance with the terms and conditions of such permit.

(e) Reimbursement**(1) General rule**

Subject to appropriations Acts, the Secretary may reimburse any non-Federal interest an amount equal to the estimate of the Federal share, without interest, of the cost of any authorized flood control project, or separable element of a flood control project, constructed pursuant to this section and provide credit for the non-Federal share of the project—

(A) if, after authorization and before initiation of construction of the project or separable element, the Secretary approves the plans for construction of such project by the non-Federal interest;

(B) if the Secretary finds, after a review of studies and design documents prepared pur-

suant to this section, that construction of the project or separable element is economically justified and environmentally acceptable; and

(C) if the construction work is substantially in accordance with plans prepared under subsection (b) of this section.

(2) Special rules**(A) Reimbursement or credit**

For work (including work associated with studies, planning, design, and construction) carried out by a non-Federal interest with respect to a project described in subsection (f) of this section, the Secretary shall, subject to the availability of appropriations, reimburse, without interest, the non-Federal interest an amount equal to the estimated Federal share of the cost of such work, or provide credit (depending on the request of the non-Federal interest) for the non-Federal share of such work, if such work is later recommended by the Chief of Engineers and approved by the Secretary.

(B) Credit

If the non-Federal interest for a project described in subsection (f) of this section carries out work before completion of a reconnaissance study by the Secretary and if such work is determined by the Secretary to be compatible with the project later recommended by the Secretary, the Secretary shall credit the non-Federal interest for its share of the cost of the project for such work.

(3) Matters to be considered in reviewing plans

In reviewing plans under this subsection, the Secretary shall consider budgetary and programmatic priorities and other factors that the Secretary considers appropriate.

(4) Monitoring

The Secretary shall regularly monitor and audit any project for flood control approved for construction under this section by a non-Federal interest to ensure that such construction is in compliance with the plans approved by the Secretary and that the costs are reasonable.

(5) Limitation on reimbursements

The Secretary may not make any reimbursement under this section until the Secretary determines that the work for which reimbursement is requested has been performed in accordance with applicable permits and approved plans.

(6) Schedule and manner of reimbursement**(A) Budgeting**

The Secretary shall budget and request appropriations for reimbursements under this section on a schedule that is consistent with a Federal construction schedule.

(B) Commencement of reimbursements

Reimbursements under this section may commence on approval of a project by the Secretary.

(C) Credit

At the request of a non-Federal interest, the Secretary may reimburse the non-Fed-

eral interest by providing credit toward future non-Federal costs of the project.

(D) Scheduling

Nothing in this paragraph affects the discretion of the President to schedule new construction starts.

(f) Specific projects

For the purpose of demonstrating the potential advantages and effectiveness of non-Federal implementation of flood control projects, the Secretary shall enter into agreements pursuant to this section with non-Federal interests for development of the following flood control projects by such interests:

(1) Berryessa Creek, California

The Berryessa Creek element of the project for flood control, Coyote and Berryessa Creeks, California, authorized by section 101(a)(5) of the Water Resources Development Act of 1990 (104 Stat. 4606); except that, subject to the approval of the Secretary as provided by this section, the non-Federal interest may design and construct an alternative to such element.

(2) Los Angeles County Drainage Area, California

The project for flood control, Los Angeles County Drainage Area, California, authorized by section 101(b) of the Water Resources Development Act of 1990 (104 Stat. 4611).

(3) Stockton Metropolitan Area, California

The project for flood control, Stockton Metropolitan Area, California.

(4) Upper Guadalupe River, California

The project for flood control, Upper Guadalupe River, California.

(5) Flamingo and Tropicana Washes, Nevada

The project for flood control, Las Vegas Wash and Tributaries (Flamingo and Tropicana Washes), Nevada, authorized by section 101(13) of the Water Resources Development Act of 1992 (106 Stat. 4803).

(6) Brays Bayou, Texas

Flood control components comprising the Brays Bayou element of the project for flood control, Buffalo Bayou and tributaries, Texas, authorized by section 101(a)(21) of the Water Resources Development Act of 1990 (104 Stat. 4610); except that, subject to the approval of the Secretary as provided by this section, the non-Federal interest may design and construct an alternative to the diversion component of such element.

(7) Hunting Bayou, Texas

The Hunting Bayou element of the project for flood control, Buffalo Bayou and tributaries, Texas, authorized by such section; except that, subject to the approval of the Secretary as provided by this section, the non-Federal interest may design and construct an alternative to such element.

(8) White Oak Bayou, Texas

The project for flood control, White Oak Bayou watershed, Texas.

(12)¹ Perris, California

The project for flood control, Perris, California.

(13) Thornton Reservoir, Cook County, Illinois

An element of the project for flood control, Chicagoland Underflow Plan, Illinois.

(14) Larose to Golden Meadow, Louisiana

The project for flood control, Larose to Golden Meadow, Louisiana.

(15) Buffalo Bayou, Texas

A project for flood control, Buffalo Bayou, Texas, to provide an alternative to the project authorized by the first section of the River and Harbor Act of June 20, 1938 (52 Stat. 804) and modified by section 3a of the Flood Control Act of August 11, 1939 (53 Stat. 1414).

(16) Halls Bayou, Texas

A project for flood control, Halls Bayou, Texas, to provide an alternative to the project for flood control, Buffalo Bayou and tributaries, Texas, authorized by section 101(a)(21) of the Water Resources Development Act of 1990 (104 Stat. 4610).

(17) Menomonee River Watershed, Wisconsin

The project for the Menomonee River Watershed, Wisconsin, including—

(A) the Underwood Creek diversion facility project (Milwaukee County Grounds); and

(B) the Greater Milwaukee Rivers watershed project.

(g) Treatment of flood damage prevention measures

For the purposes of this section, flood damage prevention measures at or in the vicinity of Morgan City and Berwick, Louisiana, shall be treated as an authorized separable element of the Atchafalaya Basin feature of the project for flood control, Mississippi River and Tributaries.

(Pub. L. 104-303, title II, §211, Oct. 12, 1996, 110 Stat. 3681; Pub. L. 106-53, title II, §223, Aug. 17, 1999, 113 Stat. 296; Pub. L. 106-60, title VI, §606, Sept. 29, 1999, 113 Stat. 501; Pub. L. 110-114, title V, §5157, Nov. 8, 2007, 121 Stat. 1257.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Section 101 of the Water Resources Development Act of 1990, referred to in subsec. (f)(1), (2), (6), (16), is section 101 of Pub. L. 101-640, title I, Nov. 28, 1990, 104 Stat. 4605, which is not classified to the Code.

Section 101(13) of the Water Resources Development Act of 1992, referred to in subsec. (f)(5), is section 101(13) of Pub. L. 102-580, title I, Oct. 31, 1992, 106 Stat. 4803, which is not classified to the Code.

The first section of the River and Harbor Act of June 20, 1938, referred to in subsec. (f)(15), is section 1 of act June 20, 1938, ch. 535, 52 Stat. 802, which is classified in part to section 540 of this title.

Section 3a of the Flood Control Act of August 11, 1939, referred to in subsec. (f)(15), is section 3a of act Aug. 11,

¹ So in original. There are no pars. designated "(9)", "(10)", or "(11)".

1939, ch. 699, 53 Stat. 1414, which is not classified to the Code.

AMENDMENTS

2007—Subsec. (f)(12) to (17). Pub. L. 110-114 added pars. (12) to (17).

1999—Subsec. (d)(1). Pub. L. 106-53, § 223(a)(1), added subpar. (A), designated existing provisions as subpar. (B), inserted subpar. heading, and substituted “under subsection (c)” for “pursuant to subsection (b) or (c)”.

Subsec. (d)(2). Pub. L. 106-53, § 223(a)(2), inserted “(other than paragraph (1)(A))” after “this subsection” in first sentence.

Subsec. (e)(1). Pub. L. 106-53, § 223(b)(1), inserted “and provide credit for the non-Federal share of the project” after “constructed pursuant to this section” in introductory provisions, and added subpar. (C).

Subsec. (e)(2)(A). Pub. L. 106-60, which directed the amendment of subpar. (A) by striking out “in advance in appropriations Acts”, could not be executed because that phrase did not appear in text subsequent to the amendment by Pub. L. 106-53, § 223(b)(2). See below.

Pub. L. 106-53, § 223(b)(2), in subpar. heading, inserted “or credit” after “Reimbursement” and, in text, substituted “subject to the availability of appropriations” for “subject to amounts being made available in advance in appropriations Acts” and inserted “, or provide credit (depending on the request of the non-Federal interest) for the non-Federal share of such work,” after “the cost of such work”.

Subsec. (e)(6). Pub. L. 106-53, § 223(b)(3), added par. (6).

§ 701b-14. Structural integrity evaluations

(a) In general

Upon request of a non-Federal interest, the Secretary shall evaluate the structural integrity and effectiveness of a project for flood damage reduction and, if the Secretary determines that the project does not meet such minimum standards as the Secretary may establish and absent action by the Secretary the project will fail, the Secretary may take such action as may be necessary to restore the integrity and effectiveness of the project.

(b) Priority

The Secretary shall carry out an evaluation and take such actions as may be necessary under subsection (a) for the project for flood damage reduction, Arkansas River Levees, Arkansas.

(Pub. L. 110-114, title V, § 5004, Nov. 8, 2007, 121 Stat. 1191.)

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110-114, set out as a note under section 2201 of this title.

§ 701c. Rights-of-way, easements, etc.; acquisition by local authorities; maintenance and operation; protection of United States from liability for damages; requisites to run-off and water-flow retardation and soil erosion prevention assistance

After June 22, 1936, no money appropriated under authority of section 701f of this title shall be expended on the construction of any project until States, political subdivisions thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of the Army that they will (a) provide without cost to the United States all lands, easements, and

rights-of-way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of the Army: *Provided*, That the construction of any dam authorized herein, may be undertaken without delay when the dam site has been acquired and the assurances prescribed herein have been furnished, without awaiting the acquisition of the easements and rights-of-way required for the reservoir area: *And provided further*, That whenever expenditures for lands, easements, and rights-of-way by States, political subdivisions thereof, or responsible local agencies for any individual project or useful part thereof shall have exceeded the present estimated construction cost thereof, the local agency concerned may be reimbursed one-half of its excess expenditures over said estimated construction cost: *And provided further*, That when benefits of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, the Secretary of the Army with the consent of the State wherein the same are located may acquire the necessary lands, easements, and rights-of-way for said project or part thereof after he has received from the States, political subdivisions thereof, or responsible local agencies benefited the present estimated cost of said lands, easements, and rights-of-way, less one-half the amount by which the estimated cost of these lands, easements, and rights-of-way exceeds the estimated construction cost corresponding thereto: *And provided further*, That the Secretary of the Army shall determine the proportion of the present estimated cost of said lands, easements, and rights-of-way that each State, political subdivision thereof, or responsible local agency should contribute in consideration for the benefits to be received by such agencies: *And provided further*, That whenever not less than 75 per centum of the benefits as estimated by the Secretary of the Army of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, provision (c) of this section shall not apply thereto; nothing herein shall impair or abridge the powers now existing in the Department of the Army with respect to navigable streams: *And provided further*, That nothing herein shall be construed to interfere with the completion of any reservoir or flood control work authorized by the Congress and now under way.

(d) As a condition to the extending of any benefits, in prosecuting measures for run-off and water-flow retardation and soil erosion prevention authorized by Act of Congress pursuant to the policy declared in section 701a of this title, to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of such Act, require—

(1) The enactment and reasonable safeguards for the enforcement of State and local laws imposing suitable permanent restrictions on